

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BERT TABOR,

Plaintiff,

v.

MICHAEL RAY ROACH, et al.,

Defendants.

Case No. 2:24-cv-02169-MMD-BNW

REPORT AND RECOMMENDATION

On November 20, 2024, Plaintiff filed his complaint. ECF No. 1. On February 19, 2025, the Court issued its Notice of Intent to Dismiss because no proofs of service had been filed for Defendants and gave Plaintiff until March 21, 2025 to file said proofs. ECF No. 6. When Plaintiff failed to meet the deadline, the Court sua sponte provided Plaintiff another 30 days. ECF No. 7. Plaintiff also failed to comply with the new deadline and to date has not filed any proofs of service. As a result, the Court recommends that Plaintiff's case be dismissed without prejudice.

The law permits a district court to dismiss an action based on a party's failure to comply with a court order. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint). In determining whether to dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious resolution of litigation, (2) the court's need to manage its docket, (3) the risk of prejudice to the defendants, (4) the public policy favoring disposition of cases on their merits, and (5) the availability of less-drastic alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's claims. The third factor, risk of prejudice to Defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court

1 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
2 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

3 The fifth factor requires the Court to consider whether less-drastic alternatives can be used
4 to correct the party’s failure that brought about the Court’s need to consider dismissal. Courts
5 “need not exhaust every sanction short of dismissal before finally dismissing a case but must
6 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
7 Cir. 1986). Because this action cannot proceed without Defendants being served,, the only
8 alternative is to enter another order setting another deadline. The circumstances here do not
9 indicate that Plaintiff needs additional time. Therefore, setting another deadline is not a
10 meaningful alternative. So, the fifth factor favors dismissal.

11 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
12 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holding that dismissal is proper where at least four
13 factors support dismissal or where at least three factors “strongly” support dismissal).

14 **IT IS THEREFORE RECOMMENDED** that this action is **DISMISSED without**
15 **prejudice** for failure to comply with the Court’s service deadline.

16 **NOTICE**

17 This report and recommendation is submitted to the United States district judge assigned
18 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
19 may file a written objection supported by points and authorities within fourteen days of being
20 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
21 objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d 1153,
22 1157 (9th Cir. 1991).

23
24 DATED: May 2, 2025

25 

26 BRENDA WEKSLER
27 UNITED STATES MAGISTRATE JUDGE
28